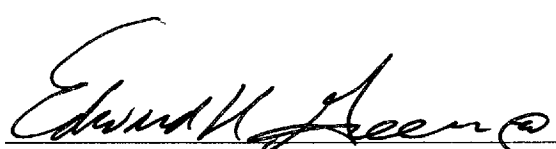


Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it contains a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional): 4541-016/RSW920030282US1	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] Date: May 7, 2008 Signature: /Edward H. Green, III/ Typed or printed name: EDWARD H. GREEN, III		Application Number: 10/814,551	Filed: March 31, 2004
		First Named Inventor: Guido	
		Art Unit: 2176	Examiner: HENRY ORR
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record Registration Number: <u>42,604</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration Number if acting under 37 CFR 1.34 _____</p>			
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.		<div style="text-align: center;">  Signature _____ Edward H. Green, III Typed or Printed Name _____ (919) 854-1844 Telephone Number _____ May 7, 2008 Date _____ </div>	
<input checked="" type="checkbox"/> *Total of <u>2</u> form(s) is/are submitted.			

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. ¹ Applicant's unique citation designation number (optional). ² Applicant is to place a check mark here if English language Translation is attached. This collection of information is required by 37 CFR 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 (1-800-786-9199) and select option 2.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of
Guido, et al.

Serial No.: **10/814,551**
Filed: March 31, 2004

For: **Affinity Group Window Management
System and Method**

Docket No: **4541-016**

)
)
) **PATENT PENDING**

)
) Examiner: Henry Orr

)
) Group Art Unit: 2176

)
) Confirmation No.: 7434
)
)

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

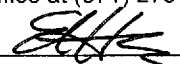
I hereby certify that this correspondence is being:

☐ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

May 7, 2008

Date


Edward H. Green, III

This correspondence is being:

☒ electronically submitted via EFS-Web

NOTICE OF APPEAL AND PRE-APPEAL BRIEF

In response to the Advisory Action mailed March 17, 2008, Applicants appeal from the rejection of claims 1-28. Applicants request a Pre-Appeal Brief Review. Payment of the appropriate fee for the Notice of Appeal accompanies this response. If additional fees are required, please charge them to Deposit Account No. 18-1167.

PRE-APPEAL BRIEF

The present invention is related to user-specified grouping of windows in a Graphical User Interface (GUI), and altering the z-order of windows in the group together. For example, claim 1 recites “establishing, by a user, a first affinity group comprising a subset of two or more but less than all of said plurality of windows in said GUI environment, said first affinity group including windows associated with at least two different, independent applications, such that the windows comprising said first affinity group are related,” and “raising a z-order of windows in said first affinity group above other windows in said GUI environment when any one window in said first affinity group is selected.” As an example, the specification describes, at ¶ 0014, and with reference to Figure 2, a window 40 associated with a word processor application, a window 38 associated with an e-mail client, and a window 36 associated with a web browser. The user may define an affinity group comprising the windows 36, 38, 40. Thereafter, whenever one of the windows 36, 38, 40 is selected, all three windows 36, 38, 40 rise to the top of the GUI desktop (i.e., they overlie, or obscure, all other windows). The applications are different in that they are not the same application, and are independent in that they are not functionally related. Both limitations are expressly recited in claims 1, 14, 19 and 25.

In the Final Office Action mailed February 7, 2008, the Examiner maintained the rejection of claims 1, 14, 19, and 25 under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 5,995,103 to Ashe (“Ashe”) in combination with U.S. Patent Number 5,920,313 to Diedrichsen *et al.* (“Diedrichsen”). Neither Ashe nor Diedrichsen, separately or in combination, teach or suggest grouping GUI windows associated with different and independent applications, and simultaneously altering the z-order of all windows in the group with respect to other GUI windows, when one is selected.

Ashe discloses a window grouping mechanism for manipulating and displaying groups of windows, all of which are associated with the same application program, via a series of linked

data structures. “For example, a drawing application may define a document window into which a user ‘draws’ images as well as floating or palette windows which contain tools, such as pencil, color, etc., for drawing those images.” col. 1, lines 48-51. Ashe discloses that a user may select only a subset of the palette windows to rise to the top of the desktop when the document window is selected, rather than all the palette windows the application has spawned, which may clutter the desktop. col. 3, lines 30-37. Ashe fails to teach or suggest an affinity group of GUI windows, and manipulating the z-order of the group, where the windows are associated with at least two different applications. Rather, Ashe discloses grouping and z-order manipulating only windows spawned by a single application. Ashe accomplishes this by creating a linked data structure containing an entry for each window the application creates. Ashe includes group identification information in these data entries, indicating the group(s) with which each window is associated. col. 3, lines 37-45.

In the Background discussion, Ashe introduces the concept of z-ordering by describing window layer priority classes. In particular, a screensaver having a priority class of 2 will always overlie a window having a priority class of 3, such as a word processing application, a spreadsheet application, and the like. Ashe notes that the applications having priority class 3 can overlie each other in z-order. The Examiner conflates this background discussion of z-ordering with a teaching of grouping different applications (those having a priority class of 3) for z-ordering. This argument fails for at least two reasons.

First, Ashe discloses that all application windows have a priority class of 3 – as opposed to a screen saver having priority class 2 – and that the applications will overlie each other in z-order. This is precisely the problem Applicants’ invention solves. Indeed, claim 1 recites, “raising a z-order of windows in said first affinity group above other windows in said GUI environment when any one window in said first affinity group is selected.” Ashe does not teach or suggest such action, but in fact teaches against it by describing all applications having a priority class

of 3, wherein all applications will be overlaid in z-order by a screen saver having a priority class of 2. A “group” comprising all application windows is a trivial exercise of the concept of grouping, and does not meet the claimed limitation of altering the z-order of a group of application windows with respect to other windows in the GUI environment.

Second, claim 1 expressly recites, “establishing, by a user, a first affinity group comprising a subset of two or more but less than all of said plurality of windows in said GUI environment.” A “group” comprising all application windows does not meet the limitation of a group of two or more but less than all application windows in a GUI environment.

Ashe teaches user-defined grouping of a subset of windows spawned by, and associated with, a single application, for the purpose of simultaneous z-order manipulation of windows in the group. This does not meet either of the claimed limitations of grouping windows associated with different and independent applications, as recited in claims 1, 14, 19, and 25. Nor does Ashe’s background discussion of z-order teach grouping less than all application windows for z-order manipulation with respect to other GUI windows.

Diedrichsen discloses grouping together various child windows – those spawned by an application running in a parent window – together with the parent to form a logical group. col. 5, line 61 – col. 6, line 4. Windows in the group are identified by, *e.g.*, highlighting the parent window in high intensity and the child windows with a reduced intensity. col. 6, lines 17-34. “Thus, in a system according to the present invention, the user can always tell which objects are related to the selected window, even if there are more instances of the same application running.” col. 6, lines 40-44. By its express terms, Diedrichsen does not disclose grouping windows for simultaneous z-order manipulation that are associated with independent applications – only applications that “are related to the selected window” as parent/child. This is clear by examining the mechanism by which Diedrichsen forms and maintains the groups, which is described with reference to Figs. 7A and 7B.

Fig. 7A depicts the overall process: select an object (710); highlight it (715); and call related objects (720). Fig. 7B depicts the details of step 720. If the selected object is a parent and there are one or more child objects associated with it (740), iterate through all child objects (745, 750). On the other hand, if the selected object is a child and there is a parent associated with it (755), access its parent (760) and iterate through the parent's other child objects (765), to highlight (or otherwise mark) the group. Diedrichsen is able to iterate through these parent/child associations by pointers (created when child objects are spawned) that associate them. See Fig. 6, and col. 8, lines 22-33.

[T]he parent window always knows about any child window it creates, and hence it can call methods on those windows to visually mark them on the display, in order to differentiate the groups of related user interface objects on the desktop; particularly, the parent window can call methods on its child windows to change the color of the window as required.

col. 8, lines 34-40. Diedrichsen discloses no other mechanism for grouping windows. In particular, Diedrichsen discloses no mechanism by which different and independent applications running in different windows may be associated by a user (or in any other way) to form affinity groups of windows for simultaneous z-order manipulation on a GUI desktop.

The Examiner disputes this assertion, with citation to col. 1, lines 63-65. The full paragraph states,

Many applications make use of several user interface objects, typically windows and icons, that are related logically. Such objects are often child objects of a main or parent window object. Different applications can also be organized into groups of applications, each of which are related by function.

By any reading, this paragraph discloses grouping only related applications, not independent applications as recited in Applicants' claims. The Examiner is correct that the term "independent" is not defined in Applicants' specification. Accordingly, the term must be interpreted as it would by one of ordinary skill in the art. As indicated by numerous definitions in the MacGraw-Hill Dictionary of Scientific and Technical Terms, 5th Ed., 1994, in the technical

arts, "independent" generally denotes "unrelated to," "not dependent on," or "having independent functionality." See, *e.g.*, independent axioms (one cannot be deduced as a theorem from the others); independent equations (no one is satisfied by a solution to the rest); independent events (probability of one occurring does not affect the probability of the other); independent functions (knowledge of values obtained by all but one insufficient to solve remaining one). Applicants submit that one of ordinary skill in the computing arts would interpret "independent" applications to mean applications that are not functionally related (*e.g.*, as parent/child).

In the Advisory Action, the Examiner stated, "the Examiner interprets the scope of the term 'independent' to have broader coverage than 'unrelated by function'. For example, as stated above, when one instance of an application is closed, the other instance of the same application stays open exemplifies multiple 'independent' application instances." (emphasis added) While two copies of the same application may be independent under such an interpretation, they manifestly cannot be different applications. Claims 1, 14, 19, and 25 recite grouping windows associated with applications that are both different and independent, for simultaneous z-order manipulation. Diedrichsen discloses only simultaneous z-order manipulation of windows associated with related applications, such as parent/child (which are not independent), or as multiple instances of the same application (which are not different, even if deemed independent).

Neither Ashe nor Diedrichsen, separately or in combination, fairly teach or suggest grouping two or more but less than all windows in a GUI environment, the windows associated with different, independent applications, for simultaneous z-order manipulation of the windows in the group with respect to all other windows in the GUI environment. Accordingly, the § 103 rejections of claims 1, 14, 19, and 24, and all claims depending therefrom, must be reversed.

Respectfully submitted,

COATS & BENNETT, P.L.L.C.

A handwritten signature in cursive script, reading "Edward H. Green, III", written over a horizontal line.

Edward H. Green, III
Registration No.: 42,604

Dated: May 7, 2008

1400 Crescent Green, Suite 300
Cary, NC 27518

Telephone: (919) 854-1844
Facsimile: (919) 854-2084